

**THE BILL BLACKWOOD
LAW ENFORCEMENT MANAGEMENT INSTITUTE OF TEXAS**

Liabilities In Law Enforcement Vehicle Pursuit

**A Policy Research Project
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ABSTRACT

The purpose of this research project is to provide information concerning these development of a vehicle pursuit policy for the local government of Zapata County. Today, law enforcement agencies throughout the country are involved in vehicle pursuits on daily bases. The amount of property damage, personal injury, and death raises a number of legal issues in law enforcement.

Law enforcement administrators must seriously assume their responsibility to implement an effective policy related to pursuits as well as establishing training officers in high speed pursuits. While the implementing of a training program might mean some financial cost, the benefits in saving will outweigh the expense. The agency should also be aware that they can be held liable under section 1983 if the failure to train officers in pursuit policy and skills amount to a deliberate indifference to the rights of person to whom the officers come into contact (City of Canton, Ohio vs. Harris, 489 U.S. 378).

The Zapata Sheriff's Department having an open pursuit policy could possibly be sued for failing to have an adequate or no policy.. It would be in the best of interest for the Zapata County Officials to review the information on legal liabilities in pursuit driving. The County Officials need to decide to implement a pursuit policy with guidelines that would meet the department needs. The policy needs to include education and training for each officer in order to prepare for the future and possibly avoid legal liabilities.

Introduction

The purpose of this research project is to provide information concerning these development of a vehicle pursuit policy for the local government of Zapata County. Today, law enforcement agencies throughout the country are involved in vehicle pursuits on daily basis. The amount of property damage, personal injury, and death raises a number of issues in law enforcement. How can we examine the priorities of liabilities in law enforcement vehicle pursuit (Homant, Kennedy, and Howton 1993)? When a department creates a restrictive pursuit policy, what should it include in regards to preventing a law suit. Many law enforcement agencies throughout the country have chosen a “no chase” policy. Other agencies have chosen to create a pursuit policy. Like any effective tool used by law enforcement, the agency must establish certain criteria regulating pursuit operations. Policies and guidelines must be establish by agencies which provides training on yearly basis. An effective pursuit policy will require three key ingredients which are reporting, recording, and reviewing. (Baker, 1996). It can also include the stop stick, a knew tool for law enforcement. What does a stop stick mean to law enforcement? It means a pursuit is heading into a road block with a tire deflating devices. This tool is a modern way to fight hot (chase) pursuit and reduce liability factors.

The sources used in this research project were magazines articles, journals and law enforcement bulletins. The intent of the research project is to inform the Zapata County Officials of the need to employ a private firm to assist in developing pursuit policy, that will meet the needs of the Zapata County Sheriff's Department as well as others small law enforcement agencies in South Texas. The development of viable pursuit policy will potentially save the county large amounts of money to costly litigation.

Historical, Legal, or Theoretical Context

The history of motor vehicle pursuit has been around for many years, but has also been very costly in tax dollars. Modern vehicle pursuits have become more aggressive, dangerous and costly. Today vehicle pursuit is defined as an event involving an officer in a law enforcement vehicle attempting to apprehend a suspect in a motor vehicle at high speeds, when in an effort to avoid capture, the suspect willfully demonstrates a total disregard for their safety. The danger to the public becomes a factor as the hot pursuit continues on public highways (Hannigan, 1992).

The Supreme Court of the United States has addressed this issue by handing down several important judicial decision relating to the use of force used by law enforcement officers when it comes to the apprehension of unarmed and none dangerous fleeing subjects. The Court held in Tennessee vs. Garner(471 U.S. 1, 1985) that, except in certain circumstances, the use of deadly force to apprehend a fleeing unarmed suspect is an unreasonable seizure under the Fourth Amendment. In that case, a law enforcement officer had shot and killed a teenager suspected of burglary as he attempted to escape.

Negligence is generally defined as doing that which an ordinarily prudent person would not do under the same or similar circumstances or failing to do that which an ordinarily prudent person would do under the same or similar circumstances. Negligence is, by definition, an unintentional tort, which means it does not require intent. Gross negligence is negligence to a greater degree. Gross negligence involves the same definition of negligence but adds a requirement that the conduct involved constitutes a willful, or heartless disregard for the rights and safety of others under the circumstances. Gross negligence is an unintentional tort; however, it is very similar to an intentional tort as it is based upon the defendant acting with knowledge (Henshaw, 1991).

Under Chapter 33 of the Texas Civil Practices and Remedies Code. The doctrine of comparative negligence provide for the establishment of the percentage of the negligence of each party to determine liability and damages (Del Carmen, 1991)

Elements of Negligence Action

- A. Act or omission**
- B. Constituting negligence, gross negligence, or negligence per se**
- C. Cause in fact**
- D. Of a foreseeable injury or consequence**
- E. Damage**

Serious crimes with relatively low pursuit speeds may be worth the danger but when a law enforcement officer pursues a driver for a minor traffic violation at high speeds. The driver, the law enforcement officer or a innocent third party is injured or killed the question of allowing pursuits is not simple (Kennedy, Homant, 1992). Earl Morris of the Utah Department of Public Safety advises “Officers should chase only when essential to the preservation of peace and terminate it when the risks outweigh the need to continue the pursuit”(Morris, 1993). The most important questions that concern law enforcement administrators and the public about pursuits are:

- (1) what is the relative dangerousness of a law enforcement pursuits;**
- (2) what is their relative importance in fulfilling the law enforcement mission;**
- (3) how can property and personal losses be minimized while officers fulfill their mission(Alpert, 1987).**

The agency must give law enforcement officers a clear understanding of when and how to conduct a pursuit. A law enforcement officer in pursuit must promote reduction of injury and death. The law enforcement officer must maintain the basic law enforcement principles to enforce the law, protect life and property. All law enforcement officers must also be thinking of minimize legal

liability in accidents that occur during vehicle pursuits. Education and field training on vehicle pursuits will be a solution for law enforcement officers in being ready for the next pursuit situation.

Review of Literature or Practice

In 1984, a study of pursuits was initiated by the Dade Association of Chiefs of Police. The study revealed that 33 percent of all the pursuits reviewed ended in accidents and 17 percent ended in injuries. A model policy was developed from this study requiring strict supervision and officer accountability by mandatory reporting and review of all pursuits (Alpert and Dunham 1989). In 1991, a study to determine the characteristics of the offender involved in high speed pursuits was conducted. This study developed a profile of offenders including age, sex, occupation, etc.. The most important information to be gained from this research is that high speed pursuits involve persons who are considered high risks on the road under everyday driving (Brewer and McGrath 1991). A 1988 thru 1991 a pursuit crash survey completed by a group called the International Association of Chiefs of Police reported the following statistics:

- A. Highway crashes cost society \$89 billion annually.
- B. Injury crashes also cost Police agencies large sums.
 - (1) One State Police department calculated losses of over 53,000 hours between 1988 and 1991, paying approximately \$1,250,000 in workman's compensation payment.
 - (2) One small municipal department lost over 2,080 man hours in a one year period, totaling in excess of \$31,200 in workman's compensation payments.
- C. Law enforcement department are vulnerable to liability claims when unbelted

officers are injured in crashes.

- (1) one large municipal department reported 676 suits between 1988 and 1991 with payments of more than \$2,200,000.
- (2) one small municipal department reported paying over \$150,000 for one crash related law suit in 1989.

A restrictive pursuit policy is the common policy found among Texas Law Enforcement Agencies (Falcon, 59-64).

It is believed that the potential for injury or death related to police pursuit can be for one crash related law suit in 1989. A restrictive pursuit policy is the common policy found among Texas Law Enforcement Agencies (Falcon, 59-64). However a review of literature revealed that most policies are deficiency due to a lack of a mission statement proper use of supervision or on how to terminate a pursuit as well as in providing for an administrative review of all pursuits (Homant, Kennedy, Howton, 1993). Policies were found to go from being too restricted while others were so vague that officers must make the pursuits. Some departments implemented policies that mainly discourage almost any pursuits (Alpert, 1987).

Law enforcement administrators must seriously assume their responsibility to implement an effective policy related to pursuits as well as establishing training officers in high speed pursuits. While the implementing a training program might mean some financial cost, the benefits in saving will outweigh the expense. The agency should also be aware that they can be held liable under section 1983 if the failure to train officers in pursuit policy and skills amounts to a deliberate indifference to the rights of person to whom the officers come into contact (City of Canton, Ohio vs. Harris, 489 U.S. 378).

Each year the damage to law enforcement vehicles is counted in the millions of dollars. The liability law suits filed against law enforcement agencies due to police pursuits also result in substantial monetary costs in legal fees and court awards. However the highest benefit in implementing adequate policies, training and proper supervision is human life. The agency must give law enforcement officers a clear understanding of when and how to conduct a pursuit. A law enforcement officer in pursuit must promote reduction of injury and death. The law enforcement officer must maintain the basic law enforcement principles to enforce the law and protect life and property. All law enforcement officers must also be thinking of minimizing municipal liability in accidents that occur during vehicle pursuits. Education and field training on vehicle pursuits will be a solution for law enforcement officers in being ready for the next pursuit situation.

Discussion of Relevant Issues

The key ingredients of this research are decisions to allow pursuits by law enforcement agencies, policy development, education and training. The decision to allow law enforcement pursuits is the first decision. If pursuits are not allowed by department procedure, the policy should state so. If allowed, policy development should provide in-depth information addressing when pursuits can and should be terminated, supervisor responsibilities of training and education. It is very important that part of the department policy development training and education for law enforcement, address that law enforcement vehicles can be described as a deadly weapon and the pursuit is a use of deadly force (Alpert and Anderson, 1986).

Laws enforcement officers are required to be certified with their duty weapons, they should also be required to be qualified in the use of a law enforcement vehicle. Law enforcement officers should be required to have continuous training and education to ensure that they maintain the

special technical defensive driving skills of high speed pursuits situation (Alpert, 1986). Even with this need, identified, some law enforcement agencies do not train their officers. Example, all police agencies in the State of Oklahoma have the option of sending their law enforcement officers to a (24) twenty-four hour training course but (50%) fifty percent do not take the advantage of the training (Smith, 1993).

There are several constraints which have a negative impact on vehicle pursuits and must be considered when developing a department policy and training pursuit driving program. The age of law enforcement vehicle fleet speaks for itself as it has a direct bearing upon pursuits. Vehicles which are old and not properly maintained could have tragic consequences for an officer pursuit at high speeds. The conditions of road surface also has a bearing if the road conditions are rough and have pot holes, may cause the officer to loose control if the vehicle is old and not maintained properly. The ideal solution for law enforcement agencies and municipalities is to keep a current fleet of vehicles and have adequate computerized maintenance program.

The age of the law enforcement officers also has and impact on training and department policy development. For insistance the average age of the officers is young, the agency should realize that the officer do not have the experience to handle these situations without proper training and education. Some younger officers may be more aggressive than more experience officers. Information can also be obtained by reviewing the fleet accidents of an agency and completing a comparison with the age of the officers. An accident and age comparison of the officers may show some interesting information concerning the officers. This is a method that will identify if the department policy needs to be updated.

One opportunity for agencies is to have access to a complete vehicle driving range. All

agencies do not have this opportunity, so their solution is to send their officers to other agencies for training. Other small agencies can only provide education and training to a small limit because of the financial cost. A decision will have to be made by local government to provide money for training and education on pursuit skills. Support of the department policy, education and training on pursuit skills will save counties a large amounts of money to costly litigation.

Law enforcement agencies can no longer declare their ignorance or failure to recognize a potential liability issue as a defense to their failure to adequately train its officers. Law enforcement agencies must not only train its employees but have a training program that is responsive to the mandates of the various courts and the rulings handed down. Former United States Supreme court Justice Warren Burger once said **“No Law Book, No Lawyer, No Judge can really tell the Law Enforcement Officer on the beat how to exerise thier discretion perfectly in every one of the thousands of different situation that can arise in the hour-to-hour work of the officer. Yet we must recognize that we need not choose between no guidance by way of basic concepts that will assist the officers in these situation,”**(Burger, 1-27).

The cost of a human life is immeasurable. Pursuits are one of the most dangerous actions that a law enforcement officers can be become involved in. With the risk of the law enforcement officer being injured or kill along with the pursued driver and innocent third parties, the officer must be aware of the dangers and trained how to handle the situation from an educational point of view. Training and education, along with an in-depth policy and supervisor intervention, will help reduce the pontential for deaths and injuries (Hannigan, 1992).

Conclusion/Recommendations

The purpose of this research project is to provide information concerning these development

of a vehicle pursuit policy for the local government of Zapata County. Today, law enforcement agencies throughout the country are involved in vehicle pursuits on daily bases. The amount of property damage, personal injury and death raises a number of issues in law enforcement. When a department creates a pursuit policy, what should it include in regards to preventing a law suit. Many law enforcement agencies throughout the country have chosen a “No Chase” policy. Other agencies have chosen to create a pursuit policy. Like any effective tool used by law enforcement, the agency must establish certain criteria regulating pursuit operations. Policies and guidelines must be establish by agencies which provide training and education on yearly basis.

The element of a pursuit preventive measurement is to have a solid pursuit policy that cannot be overstated. Federal courts have ruled that the absence of a pursuit policy, or a poorly written policy, could leave the law enforcement agency liable for accidents, injuries and death that occur during a hot (chase) pursuit. The policy should be an agreeable vehicle pursuit guidelines to be used by all officers. Second, the agency manual will state the guidelines to be followed during vehicular pursuit, and include updated reports on their vehicle maintenance. Third, a optional solution to prevent liability is to start the use of the stop stick device in pursuit driving situations.

Law enforcement officers will continue to be sued by the public in the foreseeable future, primarily because of the nature of their work. Law enforcement involves using force, sometimes deadly force, and making unwelcome decisions that deprive individuals of unfettered choice or unrestrained freedom. A person who, justly or unjustly, feels wronged by the police finds the court an appealing avenue for redress. In a free society, lawsuits are an occupational hazard with which police officers must learn to live and cope.

Law enforcement officers must know the basics of civil liabilities in hopes that such knowledge

will minimize the possibility of their being sued or, if sued, of being held liable. Gone are the days when “ignorance is bliss,” particularly in the area of law enforcement (Del Carmen, 01). It would be in the best of interest for the Officials of Zapata County to review the information on legal liabilities in pursuit driving. The County Officials need to decide to implement a pursuit policy with guidelines that would meet the department needs. The policy needs to include education and training for each officer in order to prepare for the future and possibly avoid legal liabilities.

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